

**United States Department of Labor
Employees' Compensation Appeals Board**

J.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer**

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**Docket No. 14-822
Issued: November 5, 2014**

Appearances:
Appellant, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 28, 2014 appellant filed a timely appeal from the September 3, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), denying her request for review of her claim. As the last merit decision was issued on April 9, 2013, more than 180 days from the filing of this appeal, the Board does not have jurisdiction over the merits, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 6, 2002 appellant, then a 46-year-old city carrier, filed an occupational disease claim alleging that she sustained burning pain in the neck, right shoulder, right arm, right wrist,

¹ 5 U.S.C. § 8101 *et seq.*

right hand, thumb and right elbow in the performance of duty. She alleged that her injury became aggravated while casing and delivering mail between April 13 and 17, 2002. Appellant did not stop work at that time.² OWCP accepted the claim for cervical subluxations at C1 and C2. Effective September 30, 2010, appellant was placed on the periodic rolls. On November 10, 2010 OWCP noted that appellant's claim was accepted for closed dislocations of the first and second cervical vertebrae.

By letter dated December 13, 2010, OWCP referred appellant for a second opinion, together with a statement of accepted facts, a set of questions and the medical record to Dr. Alexander Doman, a Board-certified orthopedic surgeon.

In a February 1, 2011 report, Dr. Doman reviewed appellant's history of injury and treatment and examined her. He determined that x-rays of the cervical spine were normal and there was no evidence of cervical C1-C2 subluxation. Dr. Doman advised that nerve conduction velocity studies were performed of the right upper extremity which involved the median nerve and ulnar nerve and were normal. He stated that median nerve testing revealed evidence of slowing consistent with the right median neuropathy at the level of the wrist. Dr. Doman advised that appellant did not have any cervical subluxation of the C1 and C2. He found that appellant never had subluxation of the cervical vertebrae at C1-C2. Dr. Doman explained that there was absence of any acute trauma that would have resulted in a cervical subluxation and there was no basis for such a diagnosis. Dr. Doman opined that there were no residuals of her accepted conditions.

On February 23, 2011 OWCP proposed to terminate appellant's compensation. It found the weight of the medical evidence was represented by the report of Dr. Doman and established that the residuals of the work injury had ceased. Appellant did not respond.

On April 12, 2011 OWCP terminated appellant's compensation benefits. It found that appellant no longer had a cervical subluxation causally related to factors of her employment. OWCP determined that the weight of the medical evidence rested with Dr. Doman who reviewed x-rays and determined that they did not show a subluxation of the cervical spine.

On April 3, 2012 OWCP received a request for reconsideration. In a decision dated April 24, 2012, it denied modification of the April 12, 2011 decision. On February 15, 2013 appellant again requested reconsideration. In a decision dated April 19, 2013, OWCP denied modification of the prior decisions.

On August 9, 2013 appellant filed a request for reconsideration and submitted additional evidence. A July 31, 2013 x-ray report read by Dr. Amanda Hess, a chiropractor, listed an assessment of subluxation at C1-C2. A rolling thermal scan from Dr. Hess' office also accompanied the x-ray. It was not signed.

² The record reflects that appellant has a separate occupational disease claim under claim No. xxxxxx747, filed on December 9, 2000, accepted for closed dislocation multiple cervical vertebrae. Additionally, a January 27, 2006 claim was denied under claim No. xxxxxx342. Additionally, appellant has cervicobrachial syndrome, carpal tunnel syndrome and thoracic myalgia, which are not accepted conditions.

In a decision dated September 3, 2013, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant further merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the OWCP.”⁴

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁵

ANALYSIS

Appellant disagreed with the termination of her compensation benefits. She requested reconsideration on August 9, 2013. The underlying issue is medical in nature, whether appellant continued to have residuals of her work-related injury.

OWCP denied appellant's application on September 3, 2013, finding that the evidence submitted did not warrant further merit review. On reconsideration, appellant submitted a July 31, 2013 x-ray report from Dr. Hess, a chiropractor, who diagnosed a subluxation at C1-C2. This evidence is not relevant as it does not address the issue of whether appellant continued to have residuals of her accepted work-related conditions. The Board notes that Dr. Hess merely listed a subluxation. He did not address whether it was employment related. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

OWCP also received a rolling thermal scan which accompanied the x-ray. However, this is not medical evidence as it is not signed by a physician. The Board has held that medical

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

⁵ *Id.* at § 10.608(b).

⁶ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

reports lacking proper identification do not constitute probative medical evidence.⁷ Therefore, this is not relevant or pertinent.

Appellant did not establish that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or constitute new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁷ *R.M.*, 59 ECAB 690, 693 (2008). Furthermore, even if the test was performed by a physician, it would not be relevant as it does not address causal relationship between a diagnosed condition and appellant's employment.